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*Attorneys for Plaintiff  
L & L Wings, Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY  
98 EAST CORP., PANAMA SURF &  
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

ECF Case

Civil Action No. CV-07-4137  
(BSJ) (GWG)

**DECLARATION OF DIANE C. HERTZ IN SUPPORT OF PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND ITS REPLY TO COUNTERCLAIMS**

DIANE C. HERTZ states and declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner in the law firm of Bingham McCutchen LLP, attorneys for plaintiff L & L Wings, Inc. ("Wings" or "Plaintiff") in the above-captioned action, and I respectfully

submit this Declaration in support of Plaintiff's motion for leave to file its Amended Reply to Counterclaims (the "Motion").

2. Plaintiff commenced this action with the filing of a Summons and Complaint on May 23, 2007, bringing claims for infringement and dilution of trademark and trade dress, unfair competition and breach of contract. Defendants filed their Answer and Counterclaims on September 18, 2007, and Plaintiff filed its Reply to Counterclaims on October 11, 2007.

3. On January 28, 2008, Bingham McCutchen LLP was retained as lead counsel herein, and filed a Notice of Appearance on that same day. Bingham McCutchen was retained to assist Plaintiff's current counsel, Bennett Krasner, Esq., a sole practitioner, with the prosecution of this case.

4. The day after Bingham McCutchen filed its Notice of Appearance, January 29, 2008, I telephoned counsel for Defendants, Lansing Palmer, and asked for his consent to the filing of this proposed Amended Reply to Counterclaims. Several days later, Mr. Palmer communicated to me his refusal to consent to the amendment as requested.

5. A copy of Plaintiff's Proposed Amended Reply to Counterclaims is attached hereto as Exhibit A. The amendment adds the defenses of Statute of Limitations and estoppel, and eliminates the duplicative defense of laches.

6. Attached hereto as Exhibit B is a true and correct copy of a letter, produced by Defendants in this action, from Moses & Singer (Defendants' counsel in connection with execution of the License Agreement) to Eli Tabib, dated March 8, 2000, enclosing a velobound set of all of the closing documents, which closing documents included the License Agreement itself.

7. For the reasons set forth in the accompanying Memorandum of Law, it is respectfully requested that this Court grant Plaintiff's Motion for Leave to Amend its Reply to Counterclaims.

8. I declare under penalties of perjury that the foregoing is true and correct.

Executed on February 26, 2008.

/s/ Diane C. Hertz

Diane C. Hertz